

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STUDEVAN PLUS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
TOWNSHIP OF DARBY, et al.	:	NO. 84-2631
- - - - -		
-STUDEVAN PLUS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
TOWNSHIP OF DARBY, et al.	:	NO. 97-2971
- - - - -		
-TOWNSHIP OF DARBY	:	CIVIL ACTION
	:	
v.	:	
	:	
STUDEVAN PLUS, INC.	:	NO. 97-3529

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 1997

In 1982, the Southeast Delco School District conveyed an abandoned school building to the Township of Darby. The Township of Darby then leased the premises to a civic organization, Studevan Plus, Inc., for a 99-year term for use as a community center. The building is located in a predominantly African-American neighborhood, and the Studevan Plus organization is also primarily African-American in its membership.

In 1983, the school building was very badly damaged by fire. The fire loss was settled for approximately \$300,000, but disputes arose concerning the allocation of the insurance proceeds, whether the building should be restored, et cetera. Among other

things, the township proposed to re-convey the premises to the school district.

Studevan Plus brought suit in this court against the township and others for alleged civil rights violations stemming from these transactions. The suit was settled, and a consent judgment was entered in 1985. Under the terms of the Consent Decree, the parties agreed to cooperate with each other in rebuilding the school premises, for use as a community center or other public purpose. The insurance proceeds were deposited in a joint escrow account, for use in financing the reconstruction. A committee was established to oversee the construction, the expenditure of the funds, and the subsequent operation of the project. The committee consisted of three members appointed by the Township Commissioners, three members appointed by Studevan Plus, Inc., and a seventh member, a minister who would serve as chairman, to be appointed by a ministerial organization.

The reconstruction did not go smoothly, and each side occasionally accused the other of being in violation of the Consent Decree. All such disputes were apparently settled amicably, however.

In July of 1966, the township, as landlord, brought an eviction action against Studevan Plus before a district justice, asserting a laundry-list of alleged lease violations being committed by Studevan Plus. Studevan Plus allegedly failed to appear at the scheduled hearing, and the district justice entered judgment by default. That decision was appealed to the Court of

Common Pleas of Delaware County, docketed as No. 96-52240.

In the Common Pleas Court, Studevan Plus obtained a rule on the township requiring it to file a complaint. The complaint was duly filed in early May 1997, whereupon, on May 20th, 1997, Studevan Plus, Inc. removed the action to this court, where it was docketed as 97-cv-3529.

In the meantime, on April 25, 1997, Studevan Plus, Inc. brought a separate action in this court, naming as defendants the Township of Darby and three of the five township commissioners, Studevan Plus, Inc. vs. Township of Darby, et al., Civil Action 97-2971. According to the caption of the complaint in that action, the complaint was brought "for a finding of contempt against defendants and for equitable relief and for damages," on the theory that, by attempting to evict Studevan Plus from the premises, and in numerous other respects, the township defendants are in violation of the 1985 Consent Decree.

As the foregoing recital demonstrates, counsel have managed to muddy the procedural waters. The only asserted basis for removing the eviction proceeding to this court is its alleged interference with the 1985 Consent Decree, and the separate contempt action plainly seeks enforcement of the 1985 Consent Decree as well. It seems rather obvious that all of these matters should be resolved in the 1984 case which produced the 1985 Consent Decree.

Not to be outdone, defense counsel has sought to vindicate his belief that the eviction action should not have been

removed to this court, but he seeks such vindication, not by filing a motion to remand, but by filing a purported answer to the removal petition. He has also filed a motion to dismiss the contempt action, but has conceded that the allegations of the complaint in that action are sufficient; his quarrel is with the merits, and he should therefore have proceeded by a properly-supported motion for summary judgment.

My conclusions, at this stage, are as follows:

1. The eviction action was improperly removed to this court, because the removal was untimely. The only basis for federal jurisdiction - the alleged clash between the eviction proceeding and the Consent Decree - was disclosed by the filing of the eviction action itself; plaintiff's counsel did not need to await the ultimate filing of a formal complaint in the Common Pleas Court.

While the action should be remanded to the Common Pleas Court because of the untimeliness of the removal, plaintiff is entitled to an opportunity to establish that the township should be enjoined from proceeding with that eviction action because of its alleged inconsistency with the Consent Decree.

2. Civil Action No. 97-2971 should be consolidated with the earlier case, Civil Action No. 84-2631.

3. In that consolidated action, defendants' Motion to Dismiss must be denied, without prejudice to defendants' right to proceed by way of a properly supported motion for summary judgment, if desired.

4. Enough is alleged in the recently filed complaint for contempt to warrant a stay of all further proceedings in the removed action for a period of 60 days, so that the parties can develop a record to substantiate, or refute, plaintiff's contention that the eviction would violate the Consent Decree.

An Order follows.

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v.	:	
	:	
STUDEVAN PLUS, INC.	:	NO. 97-3529

ORDER

AND NOW, this day of July, 1997, IT IS ORDERED:

1. Civil Action No. 97-2971 is CONSOLIDATED with Civil Action No. 84-2631 for all purposes.

2. All further proceedings in Civil Action No. 97-3529 are STAYED for a period of 60 days, unless otherwise ordered in the interim by this Court.

3. In Civil Action No. 97-2971 (now consolidated, as above provided, with Civil Action 84-2631) defendants' Motion to Dismiss is DENIED, without prejudice to a properly supported Motion for Summary Judgment, if appropriate.

John P. Fullam, Sr. J.